

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MICHAEL RICHARD,)
Plaintiff,)
v.)
FIREMAN'S FUND INSURANCE COMPANY,)
NATIONAL SURETY CORPORATION,)
Defendants.)

Case No.: CJ-2016-

FILED IN DISTRICT COURT
OKLAHOMA COUNTY
NOV 14 2016
RICK WARREN
COURT CLERK

CJ - 2016 - 5810

PETITION

COMES NOW the Plaintiff, Michael Richard, and for his causes of action against Defendant Fireman's Fund Insurance Company and Defendant National Surety Corporation. alleges and states as follows:

I. JURISDICTION AND VENUE

1. Plaintiff Michael Richard ("Richard"), is a citizen of the State of Oklahoma and resident of Oklahoma City, Oklahoma County, State of Oklahoma.
2. Defendant Fireman's Fund Insurance Company ("Fireman's Fund") is an insurance company licensed to and engaged in the business of insurance in the State of Oklahoma, including Oklahoma County.
3. Defendant National Surety Corporation ("National Surety") is an insurance company licensed to and engaged in the business of insurance in the State of Oklahoma, including Oklahoma County.
4. Defendant Fireman's Fund is a property and casualty insurance company and subsidiaries of Allianz, a global financial services company. Defendant National Surety Corporation is described as "[o]ne of the Fireman's Fund Insurance Companies" in various

exhibits attached hereto. Defendants are alter-egos and mutually controlled to such an extent that the acts and omissions of one must be deemed to be the acts and omissions of the other, such that separate corporate veils of the respective Defendants should be pierced and disregarded, and these multiple entities are considered as one for the purpose of liability and damages.

5. The events which give rise to this lawsuit occurred in Oklahoma City, Oklahoma County, Oklahoma.

6. The District Court in and for Oklahoma County has jurisdiction over the parties 12 O.S. §§ 137, 187.

FACTS

7. Mr. Richards hereby adopts and alleges each of the facts and allegations set forth in paragraphs 1-6 above.

8. In the early morning of July 25, 2013, Mr. Richard reported to work at the Ryder truck rental and storage yard ("Ryder storage yard") near I-40 and MacArthur Boulevard in Oklahoma City, Oklahoma. At the time, Mr. Richards had been a truck driver for Adleta Corporation for roughly fifteen (15) years and, on a daily basis, he would report to the Ryder storage yard at 4:00 a.m., find his assigned semi-truck, find the appropriate trailer, connect the trailer to his assigned semi-truck, do a pre-trip inspection, and then head out for deliveries¹.

9. After locating his truck and hooking up the truck to his assigned trailer in the Ryder storage yard, he immediately noticed that there was approximately one (1) foot of space between his trailer and the adjacent trailer. In fact, he was unable to even walk between the trailers. Every truck driver knows that the trailers must be parked with adequate spacing between the adjacent

¹ Companies lease trucks through Ryder and the Ryder storage yard stores dozens of trailers from various companies that are picked up and dropped off on a daily basis by truck drivers for different companies.

trailers so that a driver can walk between the trailers and properly operate the trailer dolly of a trailer. The trailer dolly is located towards the middle of the trailer on the left side of the truck if you are facing south. There is a trailer dolly lever that must be fully extended out and the lever turned so that the legs of the trailer will be raised and the trailer will be ready to operate.

10. Unfortunately, Mr. Richard did not have access to the adjacent trailer and could not move the trailer so that it could be properly parked. In addition, there was no one from Mr. Richard's company to notify that the trailer needed to be moved and properly parked.

11. While his truck was running and connected to the trailer, Mr. Richard went underneath the middle of the trailer from the opposite side of the trailer (right side) to reach the trailer dolly. Although not able to fully extend the trailer dolly lever², Mr. Richard half extended the lever and attempted to turn the lever with his right arm. Within a few seconds of his attempt to turn the handle, Mr. Richard heard his elbow "pop".

12. Mr. Richard injured his right elbow, arm and shoulder. In fact, he tore his right bicep tendon and would later have surgery to repair the tendon. Ultimately, he was placed on a permanent work restriction of not pulling or pushing more than thirty (30) lbs. and could no longer be a truck driver. Upon information and belief, his total medical bills from the injuries were in the amount of \$46,690.97.

13. Upon information and belief, Mr. Richard learned that the co-employee driver responsible for parking the trailer too close to his trailer was hired by Adleta Corporation through a temporary employment and staffing agency and was terminated because of the incident.

² Upon information and belief, a trailer dolly lever has two settings: 1) half extended and 2) fully extended. When the trailer dolly lever is half extended it is much more difficult to turn and operate.

14. Moreover, upon information and belief, the previous evening the co-employee driver responsible for improperly parking the trailer was driving the truck that Mr. Richard was going to use the day of the accident and, as Mr. Richard was getting off from his shift and in the parking lot, he saw him smoking in the truck. This is not permitted in the trucks so Mr. Richard told him that he could not smoke in the truck and words were exchanged between the two men. The next morning, Mr. Richard discovered that the trailer driven by that co-employee driver was parked improperly and too close to his trailer.

15. Subsequently, on November 19, 2015, Mr. Richard's underlying counsel, Tom Ventura, sent a letter of representation to Adleta Corporation and inquired as to insurance information available for an Uninsured Motorist ("UM") claim for Mr. Richard. (*See letter from Tom Ventura to Adleta Corporation, 11/19/15, attached as Exhibit "1"*).

16. On December 9, 2015, Defendants responded to the inquiry and stated "[t]his event did not involve an Uninsured Motorist." (*See Letter from Michelle Charboneau to Tom Ventura, 12/09/15, attached as Exhibit "2"*).

17. Thereafter, on January 27, 2016, Mr. Richard made a claim for UM benefits on the basis that he was injured while attempting to raise the legs of the trailer that was connected to his truck and was unable to make a liability claim against the co-employee because of the exclusive remedy doctrine under Oklahoma Worker's Compensation law; therefore, the co-employee is an uninsured motorist under Oklahoma law. (*See Letter from Tom Ventura to Michelle Charboneau, 01/27/16, attached as Exhibit "3" without attachments*).

18. On February 11, 2016, Defendants responded by stating "[a]fter reviewing your client's medical records and the circumstances surrounding the incident, we do not believe your client's injuries were caused by the negligence of an uninsured motorist." (*See Letter from*

Michelle Charboneau to Tom Ventura, 02/11/16, attached as Exhibit “4”). As a result, Defendants denied Mr. Richard’s UM claim.

19. Thereafter, Mr. Richard’s underlying counsel asked Defendants multiple times to confirm the factual basis and circumstances for denying the UM, but never received a response. (*See Letter from Tom Ventura to Michelle Charboneau, 05/18/16, attached as Exhibit “5”; see Letter from Tom Ventura to Michelle Charboneau, 07/07/16, attached as Exhibit “6”*).

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

20. Mr. Richard hereby adopts and realleges each of the facts and allegations set forth in paragraphs 1-19 above.

21. At the time of the loss suffered by Mr. Richard on July 25, 2013, Mr. Richards was insured under an insurance policy issued by Defendants. This insurance policy included Uninsured Motorist (“UM”) coverage.

22. Among other damages suffered by Mr. Richard as a result of his loss, Mr. Richard’s medical bills amounted to approximately \$46,000.00.

23. Mr. Richard made a UM claim to Defendants for payment under the policy.

24. Defendants denied Mr. Richard’s UM claim.

25. Defendants’ denial of Mr. Richard’s UM claim is a breach of the insurance contract.

26. As a direct and proximate result of Defendants’ breach of the insurance contract, Mr. Richard has suffered damages in excess of Ten Thousand Dollars (\$10,000).

SECOND CAUSE OF ACTION – BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

27. Mr. Richard hereby adopts and realleges each of the facts and allegations set forth in paragraphs 1-26 above.

28. As insurance companies licensed to do business in the State of Oklahoma, Defendants are bound by Oklahoma statutory and common law to honor their contractual obligations to insureds in good faith. As such, Defendants have and continue to have a duty to deal fairly and in good faith with Mr. Richard, its insured.

29. Defendants breached their duty to deal fairly and in good faith with Mr. Richard because Defendants must fully and fairly investigate, consider and evaluate the facts and circumstances of Mr. Richard's UM claim. Defendants cannot choose to conduct an inadequate or biased investigation with regard to Mr. Richard's UM claim and put their own interests ahead of Mr. Richard by choosing to not fully investigate the circumstances of the loss and/or ignoring evidence in favor of coverage

30. Defendants focused their investigation on finding a way to deny Mr. Richard's UM claim rather than finding ways to pay properly owed UM benefits. Defendants relied on a speculative, subjective basis to deny Mr. Richard's UM claim that was against well-established Oklahoma law and without fully and fairly investigating Mr. Richard's UM claim.

31. Defendants breached their duty to deal fairly and in good faith with Mr. Richard by not assigning properly qualified and trained claims employees to handle claims like Mr. Richard's UM claim, and not properly supervising claims employees to ensure the duties of good faith and fair dealing owed to their insureds are properly honored.

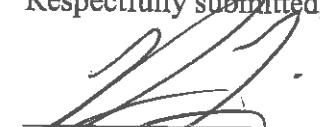
32. As a result Defendants' breach of their duty to deal fairly and in good faith, Mr. Richards suffered damages in excess of Ten Thousand Dollars (\$10,000).

33. Defendants' breach of the duty of good faith and fair dealing was intentional and malicious.

34. Punitive damages should be awarded against Defendants in an amount sufficient to punish Defendants and deter others.

WHEREFORE, Plaintiff Michael Richard prays for judgment against Defendant Fireman's Fund Insurance Company, Inc. and Defendant National Surety Corporation for an amount in excess of Ten Thousand Dollars (\$10,000.00), together with costs, interest, reasonable attorney fees, and other relief which this Court deems just and equitable.

Respectfully submitted,



Simone Gosnell Fulmer, OBA #17037
Harrison C. Lujan, OBA #30154
Jacob L. Rowe, OBA #21797
Amy H. Wellington, OBA #9467
FULMER GROUP PLLC
P.O. Box 2448
Oklahoma City, OK 73101
Phone/Fax: (405) 510-0077
Email: sfulmer@fulmergrouplaw.com
hlujan@fulmergrouplaw.com
jrowe@fulmergrouplaw.com
awellington@fulmergrouplaw.com

ATTORNEYS FOR PLAINTIFF

**ATTORNEY LIEN
JURY TRIAL DEMANDED**

Eugene Carr (1922-1992)
Patrick E. Carr^{1,2}
Michael Carr^{1,2}
A. Laurie Koller^{1,2,3}
Jack Beesley¹
Erik S. Houghton¹
Bryce A. Hill, Of Counsel¹
† - A Professional Corporation
1 - Licensed in Oklahoma
2 - Licensed in Arkansas
3 - Licensed in Missouri
4 - Licensed in Georgia & West Virginia



Tye H. Smith¹
Brent D. Berry¹
Greg Smart¹
Stephen A. Dotter¹
Thomas K. Ventura¹
Christopher L. Brinkley^{1,2,3,4}
Gary R. Morris, Of Counsel¹

Oklahoma City

November 19, 2015

Adleta Corporation
1645 Diplomat Drive, #200
Carrollton, TX 75006

Re: Our Client: Michael Richards
 Date of Injury: July 25, 2013
 Our File No.: 39699

Dear Sir/Ms:

The law firm of Carr & Carr has been retained by Michael Richards concerning the matter described above. From our initial investigation, it appears that our client has a valid Uninsured Motorist claim for damages.

We are writing directly to you because we have the insurance policy information from the vehicle he was operating on the date of the incident. In the event that you have insurance which covers our client's claim, it is our hope to settle all claims within the limits of such insurance coverage.

Please present this letter to your insurance company and/or to your attorney and request that they contact me.

Very truly yours,
CARR & CARR, ATTORNEYS

A handwritten signature in black ink that reads "Thomas K. Ventura".

Thomas K. Ventura
Attorney at Law

OKLAHOMA CITY
1350 S.W. 89th
Oklahoma City, OK 73159-6352
405.691.1600 800.296.6074
Fax 405.691.2128

TULSA
4416 South Harvard Avenue
Tulsa, OK 74135-2605
918.747.1000 800.777.4878
Fax 918.747.7284

www.CarrCarr.com

NORTHWEST ARKANSAS
2002 South 48th Street, Suite D
Springdale, AR 72762
479.770.0613 800.777.4878
Fax 479.770.0754

EXHIBIT 1

December 9, 2015



Carr & Carr
1350 S.W. 89th
Oklahoma City, OK 73159-6352

Re: Claim Number: 00515230010
Our Insured(s): ADLETA CORPORATION
Date of Loss: 7/25/2013
Claimant: Michael Richard

Dear Thomas Ventura:

I am writing to acknowledge receipt of your letter of representation dated November 19, 2015. Your client's Uninsured Motorist allegation has been assigned to me for investigation.

Michael Richard presented a Workers Compensation claim for injuries sustained in an incident which occurred on July 25, 2013. It is our understanding your client was injured while attempting to hook a trailer to a truck. He was under the trailer, turning a lever, attempting to lift the legs of the trailer. This event did not involve an Uninsured Motorist.

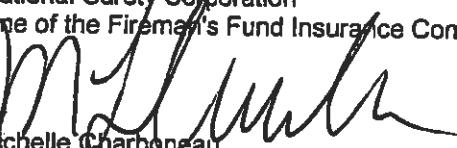
The Workers Compensation claim resolved in March of 2015. Your client was represented by Brandon Burton.

Please provide supporting documentation to substantiate that Uninsured Motorist coverage applies to this loss.

If you have any questions, please call me at the number below, between 7:00 AM – 1:00 PM CT, Monday through Friday.

Sincerely,

National Surety Corporation
One of the Fireman's Fund Insurance Companies


Michelle Charboneau
Claim Adjuster
(314) 817-2768 E-mail: michelle.charboneau1@ffic.com

P.O. Box 970
O'Fallon, MO 63366

Phone: (314) 817-2768
(314) 817-2768
Fax: (888) 579-2683

EXHIBIT 2

Eugene Carr (1922-1992)
Patrick E. Carr^{1,2}
Michael Carr^{1,2}
A. Laurie Koller^{1,2,3}
Jack Beesley¹
Erik S. Houghton¹
Bryce A. Hill, Of Counsel¹
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Tye H. Smith¹
Brent D. Berry¹
Greg Smart¹
Stephen A. Dotter¹
Thomas K. Ventura¹
Christopher L. Brinkley^{1,2,3,4}
Gary R. Morris, Of Counsel¹

Oklahoma City

January 27, 2016

Michelle Charboneau
Fireman's Fund Insurance Company
P.O. Box 970
O'Fallon, MO 63366

RE: Our Client: Michael Richards
D/O/L: July 25, 2013
Your Insured: Michael Richards
Your Claim No.: 00515230010
Our File No.: 39699

Dear Michelle:

Pursuant to Oklahoma Uninsured Motorist Law, 36 O.S. sec 3636, we are making a claim for damages under your uninsured motorist policy. Oklahoma law allows for recovery for uninsured motorist coverage where an injury occurs arising out of the ownership, maintenance or use of a motor vehicle.

It is our understanding that a co-employee parked a trailer too close to the trailer Mr. Richards was assigned to pick up. He had always been able to hook his trailer up in the past without difficulty when the trailers are properly spaced. On the day in question, he was forced to crawl under the trailer in order to raise the legs. This put him in an awkward position which led to his shoulder injury. Since Mr. Richards is unable to make a liability claim against a co-employee pursuant to Oklahoma Worker's Compensation exclusive remedy doctrine, the co-employee is deemed to be an uninsured motorist under Oklahoma law.

Enclosed you will find the following items documenting our damage claim:

Schedule "A"- Medical Bills of Michael Richards
Schedule "B"- Medical Records of Michael Richards

OKLAHOMA CITY
1350 S.W. 89th
Oklahoma City, OK 73159-6352
405.691.1600 800.296.6074
Fax 405.691.2128

TULSA
4416 South Harvard Avenue
Tulsa, OK 74135-2605
918.747.1000 800.777.4878
Fax 918.747.7284

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Fax 479.770.0754

www.CarrCarr.com

EXHIBIT 3

If you have any questions, please give me a call.

Very truly yours,
CARR & CARR, ATTORNEYS



Thomas K. Ventura
Attorney at Law

Enclosure



February 11, 2016

Carr & Carr
1350 S.W. 89th
Oklahoma City, OK 73159

Re: Claim Number: 00515230010
Our Insured(s): ADLETA CORPORATION
Date of Loss: 7/25/2013
Claimant: Michael Richard

Dear Thomas K Ventura:

This will acknowledge receipt of your letter dated January 27, 2016.

After reviewing your client's medical records and the circumstances surrounding the incident, we do not believe your client's injuries were caused by the negligence of an uninsured motorist.

We respectfully deny your client's claim.

If you have any questions, please call me at the number below, between 7:00 PM – 3:30 PM CST, Monday through Friday.

Sincerely,

National Surety Corporation
One of the Fireman's Fund Insurance Companies

Michelle Charboneau
Senior Claim Representative
(314) 817-2768 E-mail: michelle.charboneau1@ffic.com

P.O. Box 970
O'Fallon, MO 63366

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Fax: (888) 579-2683

EXHIBIT 4

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Thomas K. Ventura¹
Christopher L. Brinkley^{1,2,3,4}
Gary R. Morris, Of Counsel¹

Oklahoma City

May 18, 2016

Michelle Charboneau
Fireman's Funds Insurance Company
Via Facsimile: 888-579-2683

Re: Our Client: Michael Richard
Claim Number: 00515230010
Date of Loss: 07/25/2013
Our File No.: 39699

Dear Ms. Charboneau:

I received your letter dated February 11, 2016 denying Mr. Richard's uninsured motorist claim.

Your letter stated you do not believe Mr. Richard's injuries were caused by the negligence of an uninsured motorist. Please state the factual basis for this conclusion and/or any policy language you are relying on to deny his claim.

I look forward to hearing from you soon.

Very truly yours,
CARR & CARR, ATTORNEYS

A handwritten signature in black ink that reads "Thomas K. Ventura".

Thomas K. Ventura
Attorney at Law

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EXHIBIT 5

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Thomas K. Ventura!
Christopher L. Brinkley^{1,2,3,4}
Gary R. Morris, Of Counsel!

Oklahoma City

May 18, 2016 - July 7, 2016 (SECOND REQUEST)

Michelle Charboneau
Fireman's Funds Insurance Company
Via Facsimile: 888-579-2683

Re: Our Client: Michael Richard
Claim Number: 00515230010
Date of Loss: 07/25/2013
Our File No.: 39699

Dear Ms. Charboneau:

I received your letter dated February 11, 2016 denying Mr. Richard's uninsured motorist claim.

Your letter stated you do not believe Mr. Richard's injuries were caused by the negligence of an uninsured motorist. Please state the factual basis for this conclusion and/or any policy language you are relying on to deny his claim.

I look forward to hearing from you soon.

Very truly yours,
CARR & CARR, ATTORNEYS

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Thomas K. Ventura
Attorney at Law

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EXHIBIT 6